

# Lessons Learned from CFPB Credit Reporting Exams: The CFPB's Special Report

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Financial Services and Regulation

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### The CFPB's Renewed Focus on Accuracy and Dispute Resolution

Following up on the Consumer Financial Protection Bureau's (the "Bureau," or "CFPB") [monthly complaint report](#) highlighting credit reporting issues (and particularly issues with accuracy and disputes), on March 2, 2017, the CFPB issued a special edition of its [Supervisory Highlights](#) bulletin focusing on consumer reporting issues, highlighting those same concerns. Director Cordray also issued [remarks](#) relating to these issues the same day during the Bureau's Community Advisory Board meeting. The Bureau sees that it has a unique role to play, as the only federal regulator that can supervise the credit reporting market from end-to-end, and believes that its involvement has brought about substantial changes over the last five years. Now, the Bureau is placing a renewed emphasis on accuracy and dispute resolution in the credit reporting space that deserves the industry's attention and focus.

The Supervisory Highlights report, which deals with reporting agencies, resellers, furnishers, and users of credit reports is particularly noteworthy, as it summarizes the Bureau's five years of experience examining these entities. The report particularly calls out data accuracy, providing a great deal of guidance with respect to Bureau expectations of consumer reporting agencies and furnishers, while noting that data accuracy is a major Bureau priority. According to the Bureau, while there are improvements at consumer reporting agencies and furnishers, concerns remain. In particular, the report notes the Bureau's perception that furnishers have not sufficiently invested resources in data accuracy.

As a response to the issues the Bureau has identified, the report lays out a system for increased quality control, increased monitoring and discipline of furnishers, and tighter matching. Ultimately, this will result in less usable data in the system, by excluding or suppressing more furnished data, and by requiring greater precision of data matching. On a separate track, the CFPB is [exploring the use of "alternative data,"](#) such as rent and utility payments, for underwriting. Somewhat ironically, it may be the case that the CFPB envisions a world where there is more alternative data and less traditional data in the national credit reporting system.

### Bureau Guidance and Best Practices

More than just noting problems that were identified and resolved during the course of past exams, the report also reviews areas of concern for the Bureau and positive steps and trends companies (particular credit reporting agencies) have taken in those areas (many of which appear to be in direct response to prior reports). As such, the report identifies Bureau priorities and expectations (including by discussing possibly borderline or vague practices that the Bureau deems illegal or, at best, unwise), suggests some potential problem areas that

companies should evaluate, and serves as a “best practices” guide. Reviewing the report is essential guidance for companies in the credit reporting space, who are now on notice as to what the Bureau expects; indeed, the Bureau notes that it is focused on proactive (rather than defensive or reactive) compliance. Though any individual company may not have to implement each practice detailed below, they should be carefully evaluated against current practices as well as the Bureau’s goals and priorities. Improvements, which may represent significant changes to a company’s compliance program, should be strongly considered.

What follows is a summary of key takeaways from the Supervisory Highlights report, broken down into categories for consumer reporting agencies and resellers, furnishers, and users of credit reports. However, as the CFPB views the system holistically, it would be valuable for entities involved in credit reporting to review even those sections that don’t apply to them directly, as well as the original report in areas of particular interest.

### Consumer Reporting Companies (CRCs)

*Data Accuracy: As the Bureau notes, data accuracy is the key to the credit reporting system, and it must be an area of focus for CRCs.*

- **Data Governance:** To ensure accuracy and integrity of consumer data, CRCs need to move away from data governance structures that are decentralized and have undefined responsibilities. According to the Bureau, it has seen positive developments as companies have taken steps to create more formal data governance systems staffed by employees with responsibility to:
  - oversee policies, procedures, data quality metrics, and trends;
  - approve policies and procedures, as well as escalate decisions within the organization;
  - oversee furnisher monitoring, policy, and procedures;
  - take action against furnishers who fail to comply with requirements;
  - regularly review and track metrics relating to data governance; and
  - oversee centralized depository of data definitions, business rules, and data quality rules.
- **Quality Control:** In addition to data governance, quality control processes must be put into place to test consumer reports for accuracy. Over the last several years, the Bureau has seen certain improvements in the quality control area, including:
  - establishment of robust quality control programs with regular assessments of data accuracy;
  - development of tests that identify whether consumer reports are produced about the wrong consumer and whether reports contained mixed file data;
  - development of systems to measure the accuracy of reports and identify patterns and trends in errors;
  - use of the results of these tests and reports to identify the source of inaccuracies and take corrective actions to avoid their recurrence.

- **Oversight of Public Records Data Providers:** According to the Bureau, lax oversight of third-party public records providers has contributed to issues with the accuracy and integrity of public record information. The Supervisory Highlights does not mention a recent [Assurance of Voluntary Compliance](#) (AVC) that the three nationwide credit bureaus entered into with a number of State Attorneys General. This AVC also focused on the quality of public record data in credit reports, and resulted in the credit bureaus implementing new policies with respect to lien and judgment data. As a general matter, public records contain less and less identifying information, due to a perceived need to protect the privacy of the subject individuals. As public records contain less identifying information, and regulators demand greater accuracy in matching records to specific individuals, less and less public record information will be able to be incorporated into the national credit reporting system. Exacerbating this problem, the Supervisory Highlights report states that the CFPB expects CRCs incorporating public record information into their files to implement:
  - enhanced standards for what data will be accepted;
  - more frequent updates;
  - stricter identity matching processes; and
  - more frequent and broader audit of records providers.
- **Ongoing Furnisher Monitoring:** The CFPB expects CRCs to engage in rigorous vetting, “re-vetting,” and monitoring of data furnishers, including:
  - development of risk-based re-vetting procedures that include:
    - review of furnishers’ ability to maintain minimum data security standards;
    - re-vetting where management changes at the furnisher could impact its ability to meet requirements; and
    - creation of a process whereby the CRC would temporarily cease accepting data (and suppress trade line information) from furnishers that fail re-vetting until requirement improvements are made.
  - establishment of policies and procedures to identify furnishers who fail to meet data submission and quality requirements and take prompt corrective action, including:
    - actively monitoring for inactive furnishers and notifying furnishers who miss monthly data submissions, and rejecting data from furnishers who fail to furnish for a number of months;
    - monitoring for furnishers that exceed the monthly data rejection rate maximums; and
    - alerting furnishers when anomalies are detected so the root cause of the anomalies can be determined and corrected.
  - monitoring furnisher responses to consumer disputes for response rates or other patterns indicating that the furnisher is not conducting appropriate or sufficient reinvestigation; and
  - monitoring anomalous response rates (i.e. where certain types of responses are higher than expected) and requesting that furnishers investigate the cause and

correct practices as necessary (and ceasing to accept data where the furnisher does not comply).

- **Furnisher Reports:** CRCs have for many years compiled reports regarding the quality of data furnished, but in some cases have only provided the reports to furnishers upon request or for a fee. The CFPB expects CRCs to create these periodic data quality reports and provide them to furnishers proactively, without a formal request and at no cost. Concomitantly, the CFPB expects furnishers to be aware of these reports and to take them into account when developing and revising policies and procedures regarding the furnishing of data to CRCs.

*Dispute Handling and Resolution: The Bureau states that a well-functioning and efficient dispute resolution system is a critical part of the credit reporting process, benefiting consumers, furnishers, and CRCs.*

- **Prior Improvements in Dispute Submission and Handling:** The Bureau reviews previously discussed improvements that have been made to the dispute process, including:
  - online portals to submit disputes and attach documents;
  - systems that allow consumer documents to be forwarded to furnishers;
  - updated call-center scripts and training to solicit relevant information from consumers; and
  - elimination of requirement to obtain a recent credit report before disputes are accepted.
- **Reasonable Reinvestigation:** The Bureau has found that CRCs have not properly been reviewing and considering all relevant information provided by a consumer. For instance, some CRCs rely entirely on the furnisher to investigate without reviewing documentation provided by the consumer. These CRCs were directed to update their policies and procedures to ensure that each consumer document submitted received appropriate review and consideration.
- **Notice to Furnisher:** The Bureau has also found several instances where the required notice was not provided by the CRC to the furnisher because the furnisher's contact information was no longer valid. The Bureau required these CRCs to update their procedures to ensure that furnisher contact information remained current.
  - Examiners also found that some CRCs were not consistently providing modification or deletion notices to furnishers following an investigation, and the Bureau required the CRCs to develop processes to ensure such notifications were provided in every instance.
- **Notice to Consumer:** Examiners also determined that in some cases, consumers were receiving dispute notices that did not include a report of the results of the reinvestigation, as required. Because of the complexity of credit reports and consumer disputes, it has been the practice of CRCs to indicate that a change has been made to the consumer's credit report, and to provide a copy of a report as revised—for example, information such as an outstanding credit balance might change from day-to-day without any dispute or inquiry from the consumer, and the fear has been that recounting all of these changes to the file would be confusing or vexing to the consumer. Notwithstanding these concerns,

the CRCs were directed to more precisely report the results of their reinvestigation, indicating the information that had been changed in response to the consumer's dispute.

- The Bureau also noted that furnishers should not suppress dispute result letters to consumers who are in bankruptcy. The automatic stay provisions of the bankruptcy code do not require suppression of dispute resolution notices.

### Furnishers

*Compliance Management/Data Governance: Compliance Management Systems (CMS) must be implemented and maintained to ensure compliance with furnisher obligations and avoid consumer harm.*

- **CMS Weakness:** The Bureau found that furnishers had a variety of CMS weaknesses which required corrections, including:
  - insufficient management and board oversight over furnishing practices;
  - lack of formal data governance program;
  - failure to update policies and procedures;
  - poor training on furnishing and dispute handling; and
  - weak monitoring and corrective actions procedures (including failure to conduct follow-up testing on rejected files).

*Regulation V: Reasonable written policies and procedures and the Appendix E guidelines.*

- **Reasonable Written Policies and Procedures for Accuracy/Integrity:** Furnishers failed to comply with the requirement to establish reasonable policies and procedures in several ways, including:
  - failing to have policies and procedures on an array of relevant issues, such as:
    - handling and investigating disputes;
    - creating and retaining documentation to substantiate final dispute decisions;
    - preventing duplicative or mixed file reporting;
    - directing agents to compare the disputed information to all available information in the furnisher's various systems of record that could contain information relevant to the dispute;
    - preventing agents from responding "verified" upon receipt of dispute instead of ensuring that an investigation was completed timely; and
    - third-party service providers who were conducting furnishing on furnisher's behalf.
  - specifically for furnishing of deposit account information, failing to have policies and procedures that:
    - adequately addressed deposit accounts, despite having enterprise-wide FCRA policies;
    - were consistent with Reg V regarding the accuracy and integrity of deposit account information;

- included sufficiently detailed operating procedures and guidance for consumer deposit-related furnishing;
  - addressed the consumer notification requirements; and
  - addressed the requirement to update and correct inaccurate deposit information.
- Appendix E—Missing Data: Where information is absent on incoming loan servicing data transfers—most notably the date of first delinquency—furnishers should have a process to require a follow up with the transferor of the servicing to obtain and accurately report that information. (The Supervisory Highlights did not note that the date of first delinquency provisions in FCRA § 623(a)(5) were amended in 2003 to add a “rule of construction” specifically addressing the situation where a buyer or transferee of debt or servicing rights did not receive the date of first delinquency from the transferor. This has been a common issue for many years, and the amendments to the law were intended to provide transferees with a consumer-friendly option for reporting where no date of first delinquency is available from the transferor.)
  - Appendix E—Recordkeeping: Furnishers should have appropriate retention policies for records that would substantiate the accuracy of the furnisher’s dispute decision, as required, including any documents that memorialized what an agent reviewed and the logic of the investigation.
    - Furnishers should also keep copies of attachments submitted by consumers in an indirect dispute and ensure that they are tracking direct disputes. Although not specifically referenced by the FCRA, the CFPB believes that failure to keep these records for a reasonable period of time compromises a furnisher’s ability to QC indirect dispute investigations.
    - It is notable that some recordkeeping issues identified by the Bureau are not law violations, but rather problems that impacted the furnishers’ internal quality control and the Bureau’s ability to come later and examine them.
  - Appendix E—Feedback from CRCs: Furnishers should pay attention to feedback from relevant parties, including by:
    - establishing policies and procedures to handle feedback from CRCs about data quality;
    - reviewing exception reports to identify, correct, and resubmit invalid data identified on those reports; and
    - implementing policies and procedures to provide guidance to agents on how to proceed when information provided by a consumer is inconsistent with system data.
  - Appendix E—Service Provider Oversight: Furnishers should ensure appropriate oversight of service providers. According to the CFPB, in one instance inadequate oversight resulted in the improper sale of consumer deposit accounts to debt buyers that had been erroneously charged off.
  - Appendix E—Quality Control: Internal controls can identify data accuracy issues early on, and furnishers should:
    - perform quality checks on the data furnished;
    - test data accuracy of information after it was furnished (such as whether the charged-off amount or identifying information was correct);

- conduct regular evaluations and audits of furnishing practices or the data furnished; and
- conduct audits of dispute information to correct root causes of any issues.
- Appendix E—Training: Staff training is a key part of a compliance plan, but at some furnishers, training procedures were lacking. The Bureau also noted that at furnishers of consumer deposit account data, there was a lack of training specific to deposit account furnishing or dispute handling.
- Appendix E—Review of Procedures: The Bureau found furnishers who were not reviewing and updating their furnishing policies and procedures as necessary.

### *Data Accuracy*

- Matching the System of Record: Some furnishers were found to have furnished information they knew, or had reasonable cause to know, was inaccurate, because information did not accurately reflect what was in the furnishers' systems, in violation of the FCRA. The inaccuracies included information on delinquencies, payment history, payment amounts, unpaid charged-off balances, amounts past due, and bankruptcy status.
  - Although the FCRA provides an exception in cases where the furnisher clearly and conspicuously specifies an address for a consumer to dispute the information, the furnishers in this case did not do so.
- Date of First Delinquency: In cases where a consumer filed for bankruptcy, some furnishers updated the date of first delinquency as the date of the bankruptcy filing.
  - The date of first delinquency ("DOFD") provisions of the FCRA are very complicated and frequently present compliance challenges for data furnishers, particularly in the context of bankruptcy reporting, which is a frequent subject of class action litigation. We would note in this regard that the Credit Reporting Resource Guide ("CRRG"), which is the manual for the industry standard Metro-2 data furnishing format, specifically instructs data furnishers to include the date of bankruptcy petition in the DOFD field, where the account is current. This is important, because the CRCs use the DOFD field for the purpose of suppressing or purging the bankruptcy information in their files after 10 years, as required by the FCRA. Although somewhat confusing, we do not think that there is any inconsistency between the CRRG guidance and the Supervisory Highlights. The CRRG states that the DOFD for an account included in bankruptcy should be populated with the date of the first delinquency immediately preceding a derogatory account status (e.g., 30 days past due or charged off), or, if current, the date of bankruptcy petition. The Supervisory Highlights states that the DOFD field should not be *updated* (i.e., for an account already in a delinquent status) to include the date of bankruptcy petition, but is silent with respect to accounts that are in a current status but included in bankruptcy.
- Updating and Correcting Inaccuracies: Furnishers should update the CRC when they become aware that previously furnished information is now inaccurate. For example, furnishers should update prior furnishing on a charged-off account when a consumer makes a payment underpayment plan, or should report a cured delinquency when the furnisher learns that a consumer had a qualifying deferment during the delinquency. In addition, furnishers should exercise oversight of service providers with respect to data

updates. The CFPB noted instances where service providers delayed providing required updates for 190 to 337 days.

### *Dispute Handling*

- Notice that Dispute is Frivolous/Irrelevant: Certain furnishers determined that consumers had not provided sufficient information to conduct an investigation of a dispute without then properly notifying consumers of that determination.
- Reporting Results of Investigation: Furnishers should provide dispute resolution letters to consumers that sufficiently address the substance of the dispute. For instance, for disputes about a delinquency during a particular time frame it is not good enough to provide consumers with a form letter listing account payment history. Furnishers should evaluate dispute resolution letters to ensure that reinvestigation results are clearly reported to consumers.
- Indirect Dispute Handling: Furnishers were also found to have failed to complete indirect investigations in the required timeframes under the FCRA. Instead, the furnishers would verify the information in the required timeframe when, in fact, they had not completed the investigation or verified the accuracy of the information.
  - Moreover, some furnishers completely failed to investigate indirect disputes. This is an issue that has been repeatedly noted by the CFPB, which believes that it is critically important for furnishers to investigate consumer disputes and analyze the results to spot potential systemic errors or trends with respect to data accuracy.

### Users of Credit Reports

- Permissible Purposes: Examiners found that some entities obtained consumer reports by falsely representing to CRCs that consumers had applied for a loan and that they thus had a permissible purpose for the consumer report. These entities were directed to update the policies and procedures to ensure that reports were only obtained with a permissible purpose; strengthen monitoring and testing to respond to agent violations more quickly; and report to the board regularly on complaints and disputes involving consumer reports obtained without a permissible purpose.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Financial Services Group:

<u><b>Andrew Smith</b></u>	+1 202 662 5049	<a href="mailto:andrewsmith@cov.com">andrewsmith@cov.com</a>
<u><b>Eitan Levisohn</b></u>	+1 202 662 5309	<a href="mailto:elevisohn@cov.com">elevisohn@cov.com</a>
<u><b>Michael Nonaka</b></u>	+1 202 662 5727	<a href="mailto:mnonaka@cov.com">mnonaka@cov.com</a>
<u><b>David Stein</b></u>	+1 202 662 5074	<a href="mailto:dstein@cov.com">dstein@cov.com</a>
<u><b>Aimee Ezzell</b></u>	+1 202 662 5087	<a href="mailto:aezzell@cov.com">aezzell@cov.com</a>

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